IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 4373 of 2003

Between:

T.Appa Rao, S/o Paul
S.I. of Police, V.R.Srikakulam District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep. by its Principal Secretary for Home Department, Secretariat, A.P., Hyderabad.
2 The Director General of Police, Andhra Pradesh, Hyderabad.
3 The Deputy Inspector General of Police, Visakhapatnam Range, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of a Writ of Mandamus declaring the action in passing the impugned Proceedings No.16/PR/96, dated 12-12-1996 of the third respondent as modified by the second respondent in Proceedings Rc.No.2073/T3/96, dated 28-02-1997 as confirmed by the A.P. Administrative Tribunal in O.A.No.6213 of 1999, dated 4-12-2002 as arbitrary and illegal and set aside the same and consequently direct the respondents to give all attendant benefits such as pay and allowances, seniority, etc

Counsel for the Petitioner: MR.RAMA RAO MAVIDI for MR.S.SATYAM REDDY

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

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ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed questioning the order, dated 04.12.2002, passed by the A.P. Administrative Tribunal in O.A.No.6213 of 1999.

2. The petitioner was selected and appointed as Sub-Inspector of Police in the year 1978. He was also promoted to the post of Inspector of Police in February 1991, on out of seniority basis, on account of his excellent work. It appears that when he was working as Inspector of Police of G.K. Veedhi Circle, the Deputy Superintendent of Police appears to have sent a report against him alleging that he demanded and accepted some amount from the Constables for declaration of their probation. Thereafter, the Deputy Inspector General of Police, Visakhapatnam Range, Visakhapatnam, vide his proceedings No.2/PR/95, dated 27.06.1995, passed an order imposing the punishment of reduction in time scale of pay by two incremental stages for a period of two years. Aggrieved by the said order of punishment, the petitioner filed an appeal before the appellate authority. However, the appellate authority, holding that proper procedure was not followed, set aside the order of punishment vide its proceedings RC.No.1716/T3/95, dated 20.12.1995, and directed the authorities to conduct fresh inquiry as per Rule 20 of the CCA Rules. Accordingly, a fresh charge Memo was issued on 23.01.1996, and thereafter, the Superintendent of Police, Visakhapatnam, conducted inquiry into the charges framed against him and found that out of the two charges, one charge was held proved, and accordingly, basing on the inquiry report, the disciplinary authority imposed punishment of dismissal from service vide proceedings C.No.16/PR/96, dated 12.12.1996. Against the said order, he filed an appeal before the Director General and Inspector General of Police and the said appeal was allowed by an order, dated 28.02.1997, setting aside the order of dismissal and modified the punishment of dismissal to reduction in time scale of pay by two stages for a period

of three years with effect on future increments and pension. Challenging the said order, the petitioner filed O.A.No.6213 of 1999.

3. The Tribunal, after considering the matter, refused to interfere with the order, dated 28.02.1997, and dismissed the O.A., against which the present Writ Petition has been filed.

4. Learned counsel for the petitioner submits that the Tribunal has not considered the matter in proper perspective, and it ought to have seen that it is a case of no evidence that none of the Police Constables, from whom the petitioner alleged to have demanded and accepted the bribe, did not state in their evidence before the Enquiry Officer regarding the said aspect and even the Head Constables who were examined as PWs.4 and 10 also did not state that they collected amounts from the police constables and handed over to the petitioner. On the other hand, they have clearly disowned the statement recorded by the Deputy Superintendent of Police and it was also stated in the statements of the Police Constables that they have given statements due to fear of SDPO, Chinthapalli, and therefore, the findings arrived by the Enquiry Officer are wholly perverse and based on no evidence and this aspect was not concentrated by the disciplinary authority while imposing the punishment.

5. Be that at it may, even the appellate authority, while considering the quantum of punishment, has only modified the order of dismissal, having the effect on its future increments and also the pension.

6. The learned counsel for the petitioner submits that the order of punishment as imposed by the initial authority and modified by the appellate authority is equally illegal and unsustainable in law, more especially when the charge itself cannot be said to be proved for lack of evidence. The learned counsel would also submit that even otherwise it is a case of perverse finding as no person of ordinary prudence could come to such conclusion on the basis of material available on record. Thus, he submits that the order is liable to be set aside.

7. Lastly, he also submits that in this case the cure became worse than the disease inasmuch as if the petitioner had not filed any appeal against the initial punishment, he would have been in a better position. By filing appeal he had to suffer grave punishment. Thus he submits that it is open for the authorities to confirm or reduce the punishment, but they cannot enhance the punishment already awarded.

8. The learned Government Pleader submits that when once the mater is at large before the authorities, it is open for them to impose appropriate punishment and when the charges were held proved, the order of punishment is not said to be illegal and unsustainable in law.

9. Heard both the learned counsel.

10. It is not in dispute that initial charges framed against the petitioner were held to be proved, the punishment was imposed by the Deputy Inspector General of Police on 27.06.1995 reducing the time scale of pay by two incremental stages for a period of two years without cumulative effect. But however, the petitioner thought that even that punishment was not warranted as there is no evidence at all and the matter was carried in an appeal and the said appeal was allowed with a direction to conduct inquiry and give appropriate opportunity. After the charges were framed, the inquiry was conducted and ultimately the enquiry Officer found one charge, out of two, held proved and basing on the proved charge the petitioner was dismissed from service. Thereafter, in the appeal the order of dismissal was set aside and the punishment was modified.

11. The issue that arises for consideration is whether the order passed by the Tribunal confirming the order of punishment of the appellate authority is sustainable.

12. We are not inclined to go into the details of this issue inasmuch as the interference of this Court under Article 226 of the Constitution of India is very much

demarcated by catena of decisions of Supreme Court. Ultimately, in the instant case the punishment of reduction of time scale of pay by two incremental stages for a period of two years without cumulative effect was passed by the initial authority. But even after conducting enquiry in respect of two charges only one charge was proved and the other was held to be not proved. Under those circumstances, the punishment of dismissal would not be warranted, but since the appellate authority has set aside that punishment, we are not inclined to refer to the order of dismissal.

13. The question that calls for consideration is whether the appellate authority is justified in imposing the punishment of reduction in time scale of pay by two stages for a period of three years with effect on future increments and pension. Since, the initial punishment itself is reduction in time scale of pay by two incremental stages for a period of two years without cumulative effect and the appellate authority having found that the order of dismissal was not warranted, even though no reasons were given, ought to have considered the punishment with reference to the punishment imposed by the earlier disciplinary authority as the charges were same.

14. Under those circumstances, we are of the considered view, the order of punishment as modified, is not sustainable and we confirm the punishment as awarded by the disciplinary authority originally by an order, dated 27.06.1995.

15. Accordingly, the Writ Petition is allowed to the extent indicated above and the order of punishment as passed by the Deputy Inspector General of Police is confirmed.

16. In view of this modified punishment, the petitioner is entitled for the promotions and other benefits on par with the similarly situate persons. Therefore, the authorities are directed to take further action with regard to the promotion and other benefits.

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G. BIKSHAPATHY, J

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P.S. NARAYANA, J

Date: 14.03.2005

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To

1 The Principal Secretary for Home Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
2 The Director General of Police, Andhra Pradesh, Hyderabad.
3 The Deputy Inspector General of Police, Visakhapatnam Range, Visakhapatnam.

4 2 CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).

5 2 CD copies

6 1 CC to MR.RAMA RAO MAVIDI